

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ERNEST KELLY HOLESTINE,

Plaintiff,

v.

C. TERHUNE, ET AL.,

Defendants.

No. C 99-5200 PJH (JL)

DISCOVERY ORDER

**Denying without prejudice Plaintiff's
Motion to Compel, Docket # 89
Denying with Prejudice Motion to
Strike, docket # 99**

All discovery disputes in this case have been referred by the district court (Hon. Phyllis J. Hamilton). Judge Hamilton appointed counsel to represent Plaintiff on March 14, 2003. She previously denied without prejudice Plaintiff's request for appointment of expert witnesses. The cut-off for fact discovery is December 1, 2003. A settlement conference is scheduled before Magistrate Judge Edward M. Chen on December 22, 2003. The cut-off for depositions has been extended to January 9, 2004, and the cut-off for expert discovery is February 19, 2004. A four-day jury trial is scheduled for July 12, 2004.

Plaintiff's motion to strike and motion to compel production of documents came on for hearing November 19, 2003. Bernard Smyth and Grant P. Fondo, Cooley Godward, appeared for Plaintiff. Francis Conway appeared for Defendant R.O. Cannon. Deputy Attorney General Barbara Sutcliffe appeared for the eight other Defendants.

1 The Court considered the written pleadings and oral argument of counsel and the
2 record in this case and hereby denies Plaintiff's motion to strike and denies without prejudice
3 Plaintiff's motion to compel production of documents.

4 Plaintiff is seeking discovery which is outside the scope of the Summary Judgment
5 Order. The discovery he proposes could jeopardize the ongoing work of the administrators of
6 the consent decree in *Madrid v. Gomez* (C-90-3064 TEH, N.D.Cal.)

7 In the Summary Judgment Order the district court found triable issues of fact with
8 respect to 1) whether Defendants acted with deliberate indifference to Plaintiff's serious
9 medical needs by delaying treatment with interferon for eighteen months between the liver
10 biopsy results and the start of treatment; 2) whether Defendants showed deliberate
11 indifference to Plaintiff's serious medical needs by denying him interferon on the grounds that
12 he had previously missed medical appointments and, 3) the extent of injury Plaintiff suffered
13 as a result of the delay in treatment.
14 (Summary Judgement Order at pages 7-11).

15 Plaintiff seeks highly confidential documents in other inmates' medical records and
16 Corrections staff personnel files. Plaintiff must narrow the scope of his requests to reflect the
17 parameters of his case as defined in the Summary Judgment Order.

18 In addition, Plaintiff's discovery forays appear to be jeopardizing the delicate
19 negotiations between the administrators of the class action in *Madrid v. Gomez* and
20 Department of Corrections medical and administrative personnel. Plaintiff herein is a
21 member of the class in that case, and there is potential overlaps between the cases which has
22 not been presented to the trial court.

23 Also, the Special Master in the class action, John Hagar, referred Plaintiff's case to the
24 HCV (Hepatitis C Virus) Panel, after receiving letters from Plaintiff and his attorney.

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27 Five physicians, all having some degree of expertise in correctional health care related
28 to HCV, reviewed and discussed Plaintiff's medical care. They concluded, unanimously, that

1 “(1) PBSB was in compliance with the Court approved HCV policy when denying
2 combination drug therapy in this case and

3 “(2) there is no medical reason for an exception to the existing treatment standard in
4 this specific case.”

5 The Special Master in the *Madrid* case is of the opinion that Plaintiff’s continued
6 demands for discovery jeopardize the medical care of other PBSB prisoners, as well as
7 efforts to improve inmate medical care statewide under the consent decree in the *Plata v.*
8 *Davis* case, also involving a consent decree signed by Judge Henderson (See Supplement to
9 Defendants’ Opposition to Plaintiff’s Motion to Compel at Ex. H., letters of John Hagar,
10 Special Master, *Madrid v. Gomez*, C-90-3094 TEH)

11 Scope of Discovery After Summary Judgment

12 The U.S. Court of Appeals for the Ninth Circuit affirmed Judge Hamilton’s denial of
13 Defendants’ claim of qualified immunity for deliberate indifference to Plaintiff’s serious
14 medical needs. Judge Hamilton found the following triable issues of fact:

15 Whether defendants acted with deliberate indifference to Plaintiff’s serious medical
16 needs in the following ways:

17 1) The eighteen month delay between the liver biopsy results and Plaintiff’s receipt of
18 interferon in October 2000 - - the court found that the earlier seven month delay between
19 Plaintiff’s official diagnosis and the liver biopsy does not, as a matter of law, amount to
20 deliberate indifference to Plaintiff’s serious medical needs. However, the eighteen month
21 delay, coupled with Defendants’ unexplained failure to communicate with mental health
22 professionals about Plaintiff’s condition during that time, yields a triable issue of fact whether
23 Defendants acted with deliberate indifference to Plaintiff’s serious medical needs by failing to
24 administer interferon sooner;

25 2) Defendants’ denial of treatment for a potentially life threatening illness on the basis
26 that Plaintiff had missed medical appointments raises issues of fact arguably relevant to the
27 question whether they acted with deliberate indifference to Plaintiff’s serious medical needs;
28

(Summary Judgement Order at pages 7-11)

Factual Background

Procedural Background

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1 violation of the Eighth Amendment. Defendants include: Cal Terhune, former Director of the
2 Department of Corrections; Gregory Harding, an administrator with the Department of
3 Corrections; Robert Ayers, former warden at PBSP; Linda Melching, former Chief of the
4 Department of Corrections Inmate Appeals Branch; Dr. D. W. Winslow, Chief Medical Officer
5 at PBSP; Dr. Kevin Johns, staff physician and surgeon at PBSP; and Dr. Everett Allen, staff
6 physician at PBSP. Plaintiff is suing these Defendants in both their individual and official
7 capacities.

8 Plaintiff asserts that due to cost saving measures, a deficient health care system, and
9 Defendants' deliberate indifference to Plaintiff's medical condition, Defendants refused to
10 prescribe interferon to treat his Hepatitis C illness. Plaintiff further contends that the
11 Defendants violated the Americans with Disabilities Act and the Federal Rehabilitation Act
12 because of their refusal to provide him with interferon treatment due to his mental illness.

13 **This Motion**

14 The parties appeared for a Joint Case Management Conference on April 24, 2003.
15 The court granted Plaintiff an additional seven months of discovery, with a discovery cut-off
16 date of December 1, 2003. On May 20, 2003, Plaintiff served each of the Defendants with 33
17 requests for production of documents. On June 19, 2003, Defendants responded to the
18 requests, but Plaintiff sought additional responses. The parties met and conferred to discuss
19 additional responses, but were unable to resolve their dispute. On October 14, 2003, Plaintiff
20 filed this Motion to Compel.

21 Plaintiff seeks grievances, complaints, evaluations, reviews, reports, and related
22 documents regarding the quality of physician care and supervision at PBSP (Defendants'
23 responses to requests 2-7, 9, 17, 19, 21-23, and 26-31). In addition, Plaintiff seeks
24 documents related to other inmates with Hepatitis C, whether they were treated with interferon,
25 and why or why not. Finally, Plaintiff requests Director's responses to inmate appeals
26 regarding medical complaints at PBSP and communications between PBSP and the
27 California Department of Corrections (the "CDC"). Plaintiff claims that this evidence will show
28 Defendants' failure to provide proper treatment for Plaintiff due to the deficiencies in PBSP's

1 health care system, Defendants' knowledge of these deficiencies, and Defendants' disregard
2 of these deficiencies.

3 **Plaintiff's Document Requests and Defendants' Responses**

4 Document Requests at Issue are Plaintiff's Requests Nos. 2-7, 9, 17, 19, 21-23 and
5 26-31.

6 **Request No. 2:** All documents referring or relating to any and all protocols, guidelines,
7 policies, rules or regulations, or treatment concerning any and all prisoners incarcerated at
8 Pelican Bay State Prison infected with Hepatitis C virus, that were made, prepared, or in
9 effect, at any time from January 1, 1997 through December 31, 2002.

10 **Response No. 2:** Defendants object on grounds of burden, privacy, under the
11 Freedom of Information Act (5 U.S.C. §552) and the state Information Practices Act (Civ.
12 Code, §1798 et seq.), physician-patient privilege, and irrelevance of the time frame.
13 Defendants agree to produce responsive documents not protected by privacy.

14 **Request No. 3:** All documents referring or relating to the treatment of Interferon for and
15 all prisoners incarcerated at Pelican Bay State Prison infected with Hepatitis C virus, at any
16 time from January 1, 1997, through December 31, 2002.

17 **Response No. 3:** Defendants object to this request on the grounds that it is duplicative
18 of Request No. 2.

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20 **Request No. 4:** All documents referring or relating to the treatment for any and all
21 individuals infected with hepatitis C virus, including, but not limited to, any and all prisoners
22 incarcerated at Pelican Bay State Prison, at any time from January 1, 1997 through
23 December 2002.

24 **Response No. 4:** Defendants object to this request as duplicative of Request No. 2,
25 burdensome, irrelevant, relating to confidential prisoner records and outside the relevant time
26 period.

27 **Request No. 5:** All documents referring or relating to the treatment of Interferon for any
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1 and all prisoners incarcerated at Pelican Bay State Prison infected with hepatitis C virus who
2 have also been diagnosed with a mental illness, at any time from January 1, 1997 through
3 December 31, 2002.

4 **Response No. 5:** Defendants object that the documents are duplicative of request 2,
5 confidential, subject to physician-patient or psychotherapist-patient privilege, burdensome and
6 irrelevant particularly as to the time frame.

7 **Request No. 6:** All documents referring or relating to any and all prisoners
8 incarcerated at Pelican Bay State Prison infected with hepatitis C virus who were provided
9 Interferon treatment between January 1, 1997 and December 31, 2002, including but not
10 limited to, why treatment was granted.

11 **Response No. 6:** Defendants object to this request as duplicative of Request Nos. 2
12 and 3, confidential, privacy, subject to the physician-patient and psychotherapist-patient
13 privilege, and irrelevant, particularly as to the time frame.

14 **Request No. 7:** All documents referring or relating to any and all prisoners
15 incarcerated at Pelican Bay State Prison infected with hepatitis C virus who requested, but
16 were denied, Interferon treatment between January 1, 1997 and December 31, 2002,
17 including, but not limited to, why treatment was denied.

18 **Response No. 7:** Defendants object to this request as duplicative of Request No. 4,
19 confidential, private, subject to physician-patient and psychotherapist-patient privilege, and
20 irrelevant, particularly with respect to the time frame.

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22 **Request No. 9:** All documents referring or relating to any and all complaints,
23 grievances or reports made by any prisoner incarcerated at Pelican Bay State Prison against
24 You and/or any Defendants, at any time from January 1, 1997 through December 31, 2002.

25 **Response No. 9:** Defendants object on grounds of other inmates' privacy, physician-
26 patient privilege, the difficulty of tracking complaints and administrative appeals. Defendants
27 note that Plaintiff's appeals are available to him as easily as to Defendants. Defendants also
28 object on privacy grounds to producing personnel documents for medical staff under the
official information privilege, citing *Sanchez v City of Santa Ana*, 936 F.2d 1027, 1033 (9th

1 Cir. 1990), cert. Denied, 502 U.S. 957 (1991); *Miller v. Pancucci*, 141 F.R.D. 292, 297-98
2 (C.D.Cal. 1992). Defendants also object that this request is duplicative of Request No. 8,
3 overly broad, burdensome, irrelevant particularly with respect to the time period. Defendants
4 also claim not to be able to produce information about other defendants.

5 **Request No. 17:** Any and all California Department of Corrections' "Director's Level
6 Response" to inmate appeals alleging medical care complaints at Pelican Bay State Prison,
7 which were made, prepared, or in effect at any time from January 1, 1997 through December
8 31, 2002.

9 **Response No. 17:** Defendants object on grounds of vagueness and uncertainty as to
10 the meaning of "inmate appeals alleging medical care complaints." Defendants also object to
11 producing files or documents related to prisoners other than Plaintiff, subject to the physician-
12 patient privilege. Defendants object to the request as overbroad and burdensome and that it
13 would be difficult to track all the documents sought by this request. Plaintiff's grievances are
14 available to him in his central file. Defendants also object to the time frame as irrelevant.

15 **Request No. 19:** Any and all California Department of Corrections' health care review
16 committee meeting minutes and/or other documents made or prepared at any time from
17 January 1, 1997 through December 31, 2002, referring or relating to complaints of inadequate
18 medical care from prisoners infected with hepatitis C Virus.

19 **Response No. 19:** Defendants object to producing confidential documents protected
20 by the physician-patient privilege, overly broad, burdensome, irrelevant, particularly with
21 respect to the time frame.

22 **Request No. 21:** All communications transmitted by or sent to Pelican Bay State
23 Prison personnel from the Department of Corrections' central office and/or any division
24 thereof, referring or relating to Hepatitis C Virus, at any time from January 1, 1997 through
25 December 31, 2002.

26 **Response No. 21:** Defendants object on grounds of vagueness of the terms
27 "communications," "transmitted," "Pelican Bay State Prison personnel," "Department of
28 Corrections central office and/or any division thereof." Defendants also object that this request
is duplicative of other requests, seeks private documents subject to the physician-patient

1 privilege, the attorney-client privilege or the work product doctrine, is burdensome and
2 irrelevant, particularly with respect to the time frame.

3 **Request No. 22:** All communications transmitted between or sent to You, Defendants
4 and/or any other persons referring or relating to Plaintiff's complaints, grievances, or reports
5 concerning the treatment of his Hepatitis C Virus by Pelican Bay State Prison personnel,
6 including but not limited to staffing issues, care issues, funding issues, and treatment
7 decisions, at any time from January 1, 1997 through December 31, 2002.

8 **Response No. 22:** Defendants object to this request as vague and uncertain as to the
9 meaning of such words and phrases as "communications," "transmitted," "any other persons,"
10 and "referring or relating." Defendants also claim to not be in a position to respond on behalf
11 of other defendants or "other persons." Defendants also object on the basis of attorney-client
12 privilege and the work product doctrine. Defendants also object that copies of the documents
13 are equally available to Plaintiff and his counsel, located in either Plaintiff's central file or his
14 medical file. Defendants also object on grounds of burden, irrelevance, particularly as to the
15 time period.

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17 **Request No. 23:** All documents referring or relating to Plaintiff's complaints,
18 grievances, or reports concerning the treatment of his Hepatitis C Virus infection by Pelican
19 Bay State Prison personnel, including but not limited to staffing issues, care issues, funding
20 issues, and treatment decisions, at any time from January 1, 1997 through December 31,
21 2002.

22 **Response No. 23:** Defendants object to the vagueness of the terms "referring or
23 relating to" and "report." Defendants also object that this request is duplicative of Request No.
24 22. Defendants also object on the basis of attorney-client privilege and/or the work product
25 doctrine. Defendants also object on grounds of vagueness, burden, confidentiality and
26 irrelevance, particularly as to the time frame.

27 Defendants agree to produce Plaintiff's prison central file and medical file, if counsel
28 sends a signed release from Plaintiff to the Litigation Coordinator at PBSB.

1 **Request N. 26:** All Pelican Bay State Prison Internal Affairs Investigation Reports,
2 referring or relating to You or any of the Defendants, that were made, prepared, or in effect at
3 any time from January 1, 1997 through December 31, 2002.

4 **Response No. 26:** Defendants object that these reports, if they exist, are official
5 information and protected from disclosure under both federal and California law. In cases such
6 as this, "courts must weigh potential benefits of disclosure against potential disadvantages; if
7 the latter is greater, the official information privilege may bar discovery." *Miller v. Pancucci*,
8 141 F.R.D., 292, 297-98 (C.D. Cal.1992) (citing *Sanchez*, 936 F.2d at 1033-1034). "Such
9 balancing should be conducted on a case by case basis, determining what weight each
10 relevant consideration deserves in the fact specific situation that is before the court." *Miller v.*
11 *Pancucci*, 141 F.R.D. 292, 297-298 (C.D.Cal.1992) (citing *Kelly v. City of San Jose*, 114
12 F.R.D. 653, 656 (N.D.Cal. 1987). Defendants object also that the documents are protected,
13 private, confidential, and that Defendants are not in a position to respond with respect to other
14 defendants. Defendants object also that the request is overbroad, unduly burdensome,
15 irrelevant, particularly with respect to the time frame.

16 **Request No. 27:** All of Your Personnel Performance Evaluation Reports made,
17 prepared, or in effect at any time from January 1, 1997 through December 31, 2002.

18 **Response No. 27:** Defendants object that personnel files are highly sensitive private
19 documents, protected by state and federal privacy laws and the U.S. Constitution. They are
20 also privileged as official information. *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033
21 (9th Cir. 1990), cert. Denied, 502 U.S. 957 (1991); *Miller v. Pancucci*, 141 F.R.D. 292, 297-
22 298 (C.D.Cal.1992). Defendants also object on the basis of overbreadth and irrelevance,
23 particularly with respect to the time frame.

24 **Request No. 28:** All Pelican Bay State Prison Health Care Personnel Disciplinary
25 Reports referring or relating to You or any of the Defendants, that were made, prepared, or in
26 effect at any time from January 1, 1997 through December 31, 2002.

27 **Response No. 28:** Defendants object to this request as duplicative of request No. 27,
28 and for all the same reasons.

Request No. 29: All Pelican Bay State Prison Health Care Personnel Quality Improvement Evaluation reports referring or relating to You or any of the Defendants, that were made, prepared, or in effect at any time from January 1, 1997 through December 31, 2002.

Response No. 29: Defendants object that this response is also duplicative of Request No. 27, for all the same reasons.

In addition, Defendants respond:

Madrid v. Gomez, et al., (U.S.D.C. No. C-90-3094 TEH) stems from a class action previously filed by prisoners at PBSP against the Department of Corrections and PBSP officials concerning, among other things, the medical care of prisoners at PBSP. Pursuant to the judgment in that case, a remedial plan was submitted to the Court (Hon. Thelton Henderson) in October 1996 and was approved by the Court March 10, 1997, in an order entitled "Remedial Order re: Medical and Mental health Care Services." (Copy attached as Ex. A to Defendants' discovery responses). All modifications to the policies and procedures are set forth as supplements to the Remedial Plan and are also filed with the Court as part of the *Madrid* case.

Request No. 30: All Pelican Bay State Prison Health Care Personnel Health Care Personnel Grievance Reports referring or relating to you or any of the Defendants, that were made, prepared, or in effect at any time from January 1, 1997 through December 31, 2002.

Response No. 30: Defendants object on the grounds of vagueness and uncertainty of the term "Pelican Bay State Prison Health Care Personnel Grievance Reports." Defendants object on grounds that personnel files are sensitive and highly confidential, protected by state and federal privacy law. (Citing *Sanchez* and *Miller*). Defendants also object on grounds of overbreadth and irrelevance. Defendants also object to producing documents relating to other prisoners which are confidential and protected or subject to the physician-patient privilege. Defendants also claim portions of the time frame are irrelevant.

Request No. 31: All Pelican Bay State Prison Inmate Appeals, and First and Second Level Appeal Responses referring or relating to treatment for Hepatitis C Virus, filed at any time from January 1, 1997 through December 31, 2002.

Response No. 31: Defendants object on grounds of privacy, the physician-patient privilege, and tracking problems. Plaintiff's grievances are available in his central file. Defendants also object on grounds of overbreadth, burden and irrelevance, particularly with respect to the time frame.

Defendants' Production of Documents

Defendants claim to have produced over 700 pages of documents relating to the treatment of Plaintiff while at PBSP for his Hepatitis C condition. Defendants also claim to have produced copies of evolving protocols, guidelines, and policies at PBSP for the treatment of inmates with Hepatitis C; all documents referring or relating to the Department's medical standards of care; all Departmental epidemiological reports specifically referring to or relating to the number of inmates infected with Hepatitis C; and all PBSP pharmacy and therapeutic committee meeting minutes referring to or relating to Hepatitis C.

In response to Request 21, Defendants also agreed to produce all documents from the Department's central office contained in the office files of Defendant Dr. Winslow referring or relating to Hepatitis C, covering the period of January 1, 1998 to December 31, 2000.

Defendants agree to provide responses to Request No. 22 and 23, except those protected by privacy.

Defendants contend that documents responsive to Plaintiff's Requests 2, 9 and 17 are as easily available to Plaintiff as to Defendants.

Legal Argument

Defendants' Motion to Strike

Defendants contend that Plaintiff filed his motion late and that the motion should be stricken. Plaintiff responds that the stipulation for a briefing schedule between the parties was not signed by the Court and therefore has no force. This is true. Defendants' motion to strike is denied.

Effect of Consent Decree on Discovery in This Case

Plaintiff asks the Court to take judicial notice of the consent decree in *Madrid v. Gomez*, entered in 1997 and continuing to the present. Given that Judge Henderson signed a

1 consent decree and there is a Special Master overseeing medical and mental health care at
2 Pelican Bay State Prison, the interests of consistency require that this court refrain from
3 permitting Plaintiff, also a class member in *Madrid*, from embarking on a discovery expedition
4 and possibly undermining the progress achieved by *Madrid* and by the *Plata v. Davis* case
5 with respect to the health care of Department of Corrections inmates statewide.

6 Merits of the Plaintiff's Discovery Requests

7 Defendants claim that grievances filed by other PBSP inmates against Defendants are
8 nondiscoverable due to 1) lack of relevancy, and 2) privacy rights. Plaintiff, on the other hand,
9 argues that the documents requested go to the core issues in the litigation.

10 1) Relevance

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13 Defendants assert that the information Plaintiff seeks in his Requests, 3, 9, 17, and 21,
14 are potentially prejudicial to Defendants and irrelevant to Plaintiff's claim that he received
15 subpar treatment for his Hepatitis C illness. Defendants contends that the fact that there are
16 grievances against Defendants (who are high ranking Departmental officials) is immaterial.
17 Moreover, grievances are not proof of the underlying allegations. See *Martinez v. City of*
18 *Stockton*, 132 F.R.D. 677, 683-86 (E.D. Cal. 1990). Defendants also assert that the official
19 information privilege may bar discovery of these documents. See *Miller v. Pancucci*, 141
20 F.R.D 292, 300 (C.D. Cal. 1992).

21 Defendants also note that requests 9 and 17 are nonspecific and would include
22 grievances that do not involve Hepatitis C treatment. The requests are directed at all
23 Defendants, including five non-medical prison administrators who work outside of PBSP.
24 Defendants note that the requests cover the time frame of January 1, 1997 to December 13,
25 2002, outside the relevant time frame of this case. Plaintiff was admitted to PBSP on August
26 26, 1998. He filed his original complaint on December 8, 1999, and his amended complaint
27 on October 31, 2000.

28 Plaintiff asserts that the requested documents contain evidence of crucial issues in the
case: that there were complaints against the Physician Defendants regarding medical care

1 and that Defendants were aware of these complaints. Plaintiff further asserts that the
2 documents will show deficiencies in staffing at PBSP, poor training, improper budget
3 constraints, a poor review and discipline process, complaints regarding these problems and
4 Defendants' knowledge thereof.

5 Plaintiff contends that the Treatment Requests go to the Plaintiff's discrimination claim.
6 Plaintiff claims the documents will show that Defendants and PBSP discriminated against
7 mentally ill inmates with Hepatitis C by improperly denying these inmates interferon treatment,
8 that Defendants were or should have been aware of this discrimination, and Defendants failed
9 to rectify it. Finally, Plaintiff argues patient charts and doctors notes showing how patients
10 were treated with interferon and why others were not, are highly
11
12 relevant.

13 2) Privacy Rights

14 Defendants assert that in asking for other PBSP inmates' grievances concerning their
15 medical care, Plaintiff is requesting medical information of other inmates which is highly
16 confidential. Defendants further contend that the sensitivity of this kind of information is
17 heightened when, as here, the illness in question involves an infectious and potentially fatal
18 virus. Defendants state that "the information sought by Plaintiff's is tantamount to medical
19 records, the privacy of which is protected under both federal and state constitutions.
20 Defendants cite to *Whalen v. Roe*, where the Supreme Court recognized a limited privacy
21 interest in the confidentiality of one's medical records, derived implicitly from the U.S.
22 Constitution. 429 U.S. 589, 599-600 (1977). Further, Defendants cite to *Doe v. Attorney*
23 *General of U.S.*, for the proposition that information regarding a person's HIV status falls
24 within the privacy protection afforded medical information. 941 F.2d 780, 795-96 (9th Cir.
25 1991). Defendants also mention *Caesar v. Mountanos*, where the Ninth Circuit held that the
26 right to privacy encompasses doctor-patient and psychotherapist-patient relationships. 542
27 F.2d 1064, 1067 n.9 (9th Cir. 1976).
28

Defendants assert that the five-part test to determine the scope of privacy interests set forth in *Pagano v. Oroville Hospital* applies here.¹ Defendants claim that under all factors, the privacy rights of other PBSP inmates in their medical information and records significantly outweigh any interests of Plaintiff in the requested documents.

Conclusion and Order

This Court concludes that Plaintiff is seeking discovery which is outside the scope of relevance as delineated in the Summary Judgment Order, and that the discovery he proposes could jeopardize the ongoing work of the administrators of the consent decree in *Madrid v. Gomez* (C-90-3064 TEH, N.D.Cal.). Plaintiff fails to show the relevance of documents which are highly confidential.

Plaintiff has no expert supporting his theory that the delay in providing interferon treatment was improper or injurious to Plaintiff.

The Court balances the relevance of the documents against the privacy rights of PBSB staff and inmates and finds that Plaintiff's requests are not justified at this time. Accordingly, Plaintiff's motion to compel production of documents is denied without prejudice. The court notes also that Plaintiff's discovery requests must be considered in conjunction with *Madrid*, which may subsume the relief requested in the case at bar.

DATED: November 21, 2003

¹ "The court in *Pagano* invoke a five-part test to determine the scope of the privacy interests asserted in response to a discovery request for medical records. The court engaged in a 'conscious balancing of the many interests at stake' and considered the following factors: '(1) the probable encroachment of the individual's privacy right . . . and the magnitude of the encroachment; (2) whether the encroachment of the privacy right would impact an area that has traditionally been off limits for most regulation; (3) whether the desired information is available from other sources with less encroachment of the privacy right; (4) the extent to which the exercise of the individual's privacy rights impinge on the rights of others; and (5) whether the interests of society at large encourage a need for the proposed encroachment. *Soto v. City of Concord*, 162 F.R.D. 603, 618 (N.D. Cal. 1995)(citing *Pagano v. Oroville Hospital*, 145 F.R.D. 683, 695-98 (E.D. Cal. 1993).

United States District Court

For the Northern District of California

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JAMES LARSON
United States Magistrate Judge